IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1130 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE M.C.PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAGANBHAI AMTHABHAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 1130 of 1994

MR DEEPAK M SHAH for the appellant

Mr. K.P. Rawal, APP, for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE M.C.PATEL

Date of decision: 26/11/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.H.KADRI)

1. The appellant, original accused, by filing this appeal under Section 374(2) of the Code of Criminal Procedure, 1974 ('Code' for short), has challenged the judgment and order dated November 16, 1994, passed by the learned Additional Sessions Judge, Navsari, in Sessions Case No. 80 of 1993, by which judgment and order, the appellant was convicted under Sections 302 and 498(A) of the Indian Penal Code ('IPC' for short) and sentenced to undergo R.I. for life and fine of Rs.250 in default S.I. for two months for the offence under Section 302 of the IPC. However, the appellant was acquitted of the charges framed under Section 498(A) of the IPC.

2. Briefly stated, the prosecution case is as under: P.W.9, Bhudiya Kalyan, had five daughters. The eldest daughter, Geetaben, was married with the appellant prior to seven years of the date of the incident, which took place on May 31, 1993. The appellant had illicit relation with other lady and, therefore, he was bringing pressure on deceased Geetaben to give a divorce. Two daughters were born out of the wedlock of deceased Geetaben with the appellant. On the day of the incident, i.e. May 31, 1993, complainant, P.W.9, Bhudiya Kalyan, was at his residence at village Kabilpore. At that time, his son-in-law, Natubhai Mangubhai, came to his house and informed that Geetaben had a severe pain in her stomach on the previous night and had expired due to the pain in the stomach and vomiting. On hearing the news, P.W.9, Bhudiya Kalyan, and his wife had gone to village Ganesh Sisodra. When they reached the house of the appellant, they found that Geetaben had already expired. The appellant had made out a false ground that, all of a sudden, Geetaben had expired due to severe abdominal pain. P.W.9, Bhudiya Kalyan, had suspected that the appellant was giving false information with regard to the death of Geetaben and, therefore, he went to Navsari Rural Police Station and informed the Police Station Officer Incharge of the said Police Station about the accidental death of Geetaben. An entry was made at the Navsari Rural Police Station being Accidental Death Entry No.17/93. The Deputy Superintendent of Police, Mr. Seha, had taken over the investigation and went to the place of the incident and had collected incriminating articles by drawing a panchanama. P.W.9, Bhudiya Kalyan, had, thereafter, lodged First Information Report before the Deputy Superintendent of Police against the appellant for the offence under Section 498(A) and 306 of the IPC, which came to be registered as CR No.I-92/93 at Navsari

Police Station. The Investigating Officer had, thereafter, held inquest of the body of Geetaben and thereafter sent the body for the post-mortem. P.W.8, Dr. Ushaben Sharma, had performed the postmortem of the body of deceased Geetaben between 9.30 a.m. and 10.30 a.m. on March 31, 1993. The investigation of the above crime was entrusted to P.W.20, Shantaram Mahajan, who was at the relevant time discharging his duty as Police Sub-Inspector at Navsari Rural Police Station. PSI, Mahajan, had arrested the appellant on June 1, 1993, at 11. a.m., under an arrest panchanama. PSI, Mahajan, had also recorded statements of the witnesses who were residing in the neighbourhood of the house of the appellant. On receipt of the post-mortem report, the Investigating Officer had submitted his report before the learned Chief Judicial Magistrate, Navsari, to add Section 302 of the IPC in the First Information Report. During the interrogation, the appellant had shown his willingness to produce the rope and cloth by which he had strangulated deceased Geetaben. Accordingly, the said rope and a piece of cloth were seized under a panchanama drawn under Section 27 of the Evidence Act. Incriminating articles collected during the investigation were sent to the Forensic Science Laboratory ('FSL' for short) for analysis. On receipt of the report from the FSL, and, on completion of the investigation, chargesheet came to be filed against the appellant for the offences under Sections 498(A) and 302 of the IPC in the Court of the learned Chief Judicial Magistrate, Navsari, which came to be numbered as Criminal Case No.6398 of 1993. As the offence under Section 302 of the IPC is exclusively triable by the Court of Sessions Judge, the learned Chief Judicial Magistrate, Navsari, committed the case to the Court of Sessions, Valsad at Navsari, which came to be numbered as Sessions Case No.80 of 1993.

3. Charge Exh.1 was framed against the appellant for the offences under Sections 498(A) and 302 of the IPC against the appellant. The charge was read over and explained to the appellant wherein he pleaded not guilty and claimed to be tried. The prosecution, in order to prove the charges framed against the appellant, examined (1) P.W.1, Ballubhai Maganbhai,Exh.6, (2) P.W.2, Dinesh Nagin, Exh.9 (3) P.W.3, Methus Thomas , Exh.11; (4) P.W.4, Hiralal Maganbhai Exh.12; (5) P.W.5, Taraben Balubhai, Exh.15; (6) P.W.6, Somiben Dhirubhai Exh.16; (7) P.W.7, Balubhai Shankerbhai Exh.17; (8) P.W.8, Dr.Ushaben Sharma, Exh.18; (9) P.W.9, Bhudiya Kalyan Exh.20 (10) P.W.10, Fulchand Dhisanbhai Ex.35; (11) P.W.11, Shivbachhan Fulesverram, Exh.25; (12) P.W.12, Pahlad Lalchand, Exh.27; (13) P.W.13, Ashis Bhupendra,

Exh.28; (14) P.W.14, Dhansukh Manilal, Exh.30; (15) P.W.15, Nathubhai Bhanabhai, Exh.31; (16) P.W.16, Mangiben Budhiyabhai, Exh.32; (17) P.W.17, Abajibhai Sankerbhak, Exh.33; (18) P.W.18, Balubhai Naginbhai, Exh.35; (19) P.W.19, Natwarlal Bechardas, Exh.36; (20) P.W.20, Shantaram Tulsiram, Exh.38 and (21) P.W.21, Deputy Superintendent of Police, Ayodhyasinh Sugarsing Senger, Exh.46. The prosecution produced documentary evidence such as inquest panchanama, map of the place of the incident, arrest panchanama of the appellant, panchanama of scene of offence, post-mortem notes, discovery panchanama, FIR lodged by P.W.9, complainant, Bhudiya Kalyan, report of the FSL, etc. to prove the case against the appellant. After the evidence of the prosecution was over, the appellant was questioned generally and his statement came to be recorded under Section 313 of the Code. The defence of the appellant was of general denial. In further statement, the appellant stated that deceased Geetaben had developed abdominal pain and when he had gone to call her father, they had come after 3-4 days; that Geetaben had taken treatment for abdominal pain from Parsi Hospital; that in the night of the incident, Geetaben had expired due to vomiting and abdominal pain and, therefore, he had informed his in-laws with regard to the death of Geetaben. The appellant did not lead any evidence nor examined any witness in his defence.

4. The learned Additional Sessions Judge, on appreciation of oral as well as documentary evidence and the arguments advanced by the learned advocates for the parties, came to the conclusion that the relation between the appellant and deceased Geetaben had become strained as the appellant had developed illicit relation with the other lady. It was further held that, due to illicit relation by the appellant with the other lady, frequent quarrels were taking place between the appellant and deceased Geetaben. It was further held that the report of post-mortem Exh.19 had revealed that the deceased had died due to 'asphyreia caused by smothring'. It was further held by the learned Additional Sessions Judge that, the deceased had died homicidal death. The learned Additional Sessions Judge held that this was a case of circumstantial evidence wherein the prosecution had proved the whole chain of circumstances, which only pointed out beyond doubt that the appellant and the appellant alone had committed murder of deceased Geetaben. On the abovereferred to conclusions, the learned Additional Sessions Judge convicted and sentenced the appellant for the offences under Section 302 of the IPC and sentenced to undergo R.I. for life and fine of

Rs.250 in default S.I. for two months for the offence, which has given rise to filing of this appeal.

5. Learned advocate Mr. Deepak M. Shah for the appellant and learned Additional Public Prosecutor, Mr. K.P. Rawal, have taken us through the entire record and proceedings of the case. We have heard learned counsel for the parties and have also gone through the judgment of the learned Additional Sessions Judge.

6. Learned advocate for the appellant has strenuously urged that this was a case of circumstantial evidence where the prosecution had not proved beyond doubt that the appellant and the appellant alone was responsible for causing the death of deceased Geetaben. It is urged that all the circumstances pointing towards the guilt of the appellant were not duly proved by the prosecution and, therefore, the benefit of doubt should be given in favour of the appellant and the appeal be allowed accordingly.

7. Learned Additional Public Prosecutor, Mr. K.P. Rawal, has supported the judgment and order of the trial court and has submitted that all the circumstances were proved against the appellant which led to the inference of guilt of the appellant and, therefore, the appeal be dismissed.

8. It is relevant to notice that the prosecution has not claimed that the incident in question was witnessed by any one and no direct evidence regarding the incident is tendered before the Court. Admittedly, the whole case against the appellant rests on circumstantial evidence. The law relating to circumstantial evidence is well settled. In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. The circumstances should be of a conclusive nature and tendency, and they should be such as to exclude every hypothesis, but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability, the act must have been done by the accused. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, Court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the

conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is, or, are, not decisive. Where a case rests squarely on circumstantial evidence, the various sets of circumstantial evidence should be taken into consideration and their total effect should be such that they must lead unerringly to the guilt of the accused. Each fact must be proved individually and only thereafter the sum total of the proved facts has to be taken into consideration, but this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must prove each and every hypothesis suggested by the accused, however, extravagant and fanciful it might be. In Sharad v. State of Maharashtra, AIR 1984 SC 1622, after referring to earlier case-laws, the Supreme Court has summarised the conditions to be fulfilled in a case based on circumstantial evidence as under :-

(i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may' be established; (ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty; (iii) the circumstances should be of a conclusive nature and tendency; (iv) they should exclude every possible hypothesis except the one to be proved; (v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused; and (vi) where the various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the court. If the aforesaid various conditions are fulfilled, only then a Court can use a false explanation or a false defence as an additional link and not otherwise. As observed earlier, if the circumstances proved are consistent with the innocence of the accused, then the accused is entitled to the benefit of doubt. However, in applying this principle, distinction must be made between facts, called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to the proof of basic or primary facts, the Court has to judge the evidence in the ordinary way. It has to consider the evidence and decide whether that evidence proves a particular fact or not and if that fact is proved, the question arises whether that fact leads to

the inference of guilt of the accused person or not and in dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should be no missing links in the case, yet it is not essential that every one of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences or presumptions, the Court must have regard to the common course of natural events, to human conduct and their relations to the facts of the particular case.

9. In the light of the abovereferred to principles, we will now consider the question whether the case against the appellant is proved or not.

10. The post-mortem of the body of Geetaben was performed by P.W.8, Dr. Ushaben Sharma, on May 31, 1993. As per the oral testimony of P.W.8, Dr. Ushaben, and the post-mortem note Exh.19, there was an external injury on the neck of the deceased, i.e. 'liga tuse mark on both side of face, extending from both angle of mouth up to 1" below to the lower part of both ear." The cause of the death, as deposed by P.W.8, Dr. Ushaben, and also noted down in the post-mortem notes, was due to 'asphyreia caused by smothering'. In view of the oral testimony of P.W.8, Dr. Ushaben, and the post-mortem notes Exh.19, it is proved beyond doubt that deceased Geetaben had died homicidal death. Hence, the finding of the learned Additional Sessions Judge that deceased Geetaben died homicidal death, deserves to be confirmed.

11. As stated in the earlier part of the judgment, there are no eye-witnesses to the incident and the prosecution had entirely relied upon the circumstantial evidence produced against the appellant. The first circumstance, on which the prosecution has placed reliance, is that the relations between deceased Geetaben and the appellant were not good and the appellant was treating deceased Geetaben with cruelty and was beating her. P.W.9, Budhiya Kalyan, who is the father of the deceased, had deposed that Geetaben was married with the appellant prior to seven years of the date of the incident and, after birth of two daughters, the appellant had started ill-treating her. Many cases were filed in the Court by the deceased against the appellant claiming maintenance, as the appellant had driven out the deceased from her matrimonial home. The orders of payment of maintenance were passed against the appellant and, after some time, a settlement had taken place between the deceased and the appellant. As a result of the settlement, the appellant had taken the deceased and two

daughters back to his house, and had assured that he would treat them well. The oral testimony of P.W.9, Budhiya Kalyan, further proves that, prior to 15 days of the incident, deceased Geetaben had come to his house and had stayed there for two days. The appellant had informed P.W.9, Budhiya Kalyan, that Geetaben had expired and, therefore, P.W.9, Budhiya Kalyan, along with his several family members had gone to village Ganesh Sisodra and found that Geetaben was lying in the house dead. P.W.9, Budhiya Kalyan, suspecting some foul play, had lodged the complaint at Navsari Rural Police Station against the appellant for causing the death of his daughter. The mother of the deceased, P.W.16, Mangiben Budhiyabhai, had also deposed that the appellant was ill-treating her daughter and, therefore, Geetaben had come to reside at her father's house. It was deposed by P.W.16, Mangiben Budhiyabhai, that the appellant was pressurizing the deceased to give a divorce. She deposed that, prior to 15 days of the incident, deceased Geetaben had come to her house and told her that the appellant was ill-treating her and was telling Geetaben that she would be killed by administering poison. P.W.16, Mangiben Budhiyabhai, deposed that, when the appellant informed about the death of deceased Geetaben, they had come to the appellant's house and found Geetaben lying in the house and there were ligature marks on the neck and the neck had become swollen. The appellant had made out a false case that, as Geetaben was having abdominal pain, she was given some medicine and after that she had vomited and had expired. The oral testimony of P.W.9, Budhiya Kalyan and P.W.16, Mangiben Budhiyabhai, the parents of deceased Geetaben, had proved beyond doubt that the appellant was ill-treating deceased Geetaben and was trying to get rid of her. Deceased Geetaben had also shown her apprehension that she would be killed by the appellant by administering poison. Thus, the circumstance against the appellant that he was ill-treating deceased Geetaben was proved beyond pale of doubt by the prosecution.

12. The second circumstance, on which the prosecution has placed reliance, is that, on the day of the incident, the appellant and deceased Geetaben had gone to watch a movie and had returned the home at 4 p.m. After return to their home, the appellant and deceased Geetaben along with their children were sleeping in the house. The prosecution had examined P.W.5, Taraben Balubhai, who was residing just near the house of the appellant. She deposed that on May 30, 1993, she was at her house and, on that day, the appellant and deceased Geetaben had gone

to watch a movie and had returned the home at 4 p.m. She deposed that, at the late night, the appellant came to her house and told her that Geetaben was not well and requested her to come to his house. She further deposed that, when they reached the house of the appellant, they found that Geetaben was lying on the otla and had already expired. She also deposed that the appellant was staying near her house since many years and there used to be quarrels between the appellant and deceased Geetaben. The testimony of P.W.5, Taraben Balubhai, had gone unchallenged. She was not cross-examined by the learned advocate for the appellant before the trial court. P.W.6, Somiben Dhirubhai, who was also residing in the neighbourhood of the appellant, also deposed that, on the night of the incident, around 2 to 3 a.m. the appellant had come to her house and told them that Geetaben was not well and, therefore, requested them to come to his house. She also deposed that, when they reached the house of the appellant, they found Geetaben lying in the dead condition on the otla. Similar is the evidence of P.W.7, Balubhai Shankerbhai, who was also a neighbour of the appellant. P.W.7, Balubhai Shankerbhai, deposed that, around 3 a.m. the appellant had come to his house and had told him that Geetaben was not well and he should come to his house. He also stated that, when they reached the house of the appellant, they found Geetaben lying on the floor of the otla in the house of the appellant and she had already expired. The evidence of P.W.5, Taraben Balubhai, P.W.6, Somiben Dhirubhai, and P.W.7, Balubhai Shankerbhai, therefore, proves beyond doubt that on May 30, 1993, the appellant and deceased Geetaben had gone to watch a movie and returned to their house around 4 p.m. When Geetaben expired, she was in the company of the appellant and both of them were sleeping in their house. The evidence of the above witnesses also disclosed that the appellant had gone to their houses and informed them that Geetaben was not well and requested them to come to his house. In our view, the appellant had made out a false explanation by calling the neighbours that Geetaben was not well, but, in fact, at that point of time, Geetaben had already expired. In our view, this false explanation was made out by the appellant to misguide them with a view to shield his crime. By giving false explanation that Geetaben was not well, the appellant had tried to conceal the death of Geetaben which he had caused by strangulation or by smothering. Giving false explanation to the neighbours is also strong circumstance against the appellant that he was the only person who had caused the death of the deceased. P.W.8, Dr. Ushaben, who had performed the post-mortem of the body of the deceased, had also opined

that the death of Geetaben might have been caused by strangulation. P.W.8, Dr. Ushaben, had also deposed that the injuries which were fund on the back and on the head of deceased Geetaben, were also suggestive of the fact that, when the appellant had tried to strangulate her, she might have tried to get herself rescued from the clutches of the appellant. In our view, the prosecution had proved beyond doubt that, in the night of 30th May 1993, the appellant and deceased Geetaben were staying in the same house and, in the late night, deceased Geetaben was found in the death condition. In our view, the circumstances proved by the prosecution point towards the only hypothesis that the appellant and the appellant alone caused the murder of his wife, Geetaben.

13. All the family members of the appellant and the appellant himself were in the house on the fateful night. If death occurs in suspicious circumstance, a reasonable explanation was expected from the appellant. But, the appellant had given false explanations about occurrence of the incident before the witnesses and the parents of deceased Geetaben. False plea is a relevant circumstance which militates against innocence of the appellant. Unnatural conduct of the appellant immediately after the occurrence and false plea of giving false explanation that Geetaben was not well to the neighbours and the parents of Geetaben is a relevant circumstance, which would complete the chain of circumstantial evidence leading to only one conclusion that the appellant had committed the offence of murder of his wife. The conduct of the appellant to misguide the real occurrence of the incident by giving false versions also shows his guilty conduct. This conduct of the appellant is clearly admissible under Section 8 of the Indian Evidence Act, as part of res-gestae as evidence of conduct immediately after the occurrence. Further, there was strong motive on the part of the appellant to commit murder of Geetaben, as deposed by P.W. 16, Mangiben Budhiyabhai.

14. From the evidence, as discussed above, the prosecution has proved following circumstances beyond reasonable doubt:

(i) The relations between deceased Geetaben and the appellant were not good and the appellant was treating deceased Geetaben with cruelty and was beating her.

(ii) On the day of the incident, the appellant and deceased Geetaben had gone to watch a movie and had returned the home at 4 p.m. After return to their home, the appellant and deceased Geetaben along with their

children were sleeping in the house. When Geetaben expired, she was in the company of the appellant and both of them were sleeping in their house.

(iii) The appellant had given false explanations about occurrence of the incident before the witnesses and the parents of deceased Geetaben.

(iv) The evidence of P.W.8, Dr. Ushaben, and the post-mortem report Exh.19 indicate that the death of Geetaben might have been caused by strangulation, and the injuries which were fund on the back and on the head of deceased Geetaben, were also suggestive of the fact that, when the appellant had tried to strangulate her, she might have tried to get herself rescued from the clutches of the appellant.

15. In a case of circumstantial evidence when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This proposition fully applies to the circumstances of the present case. On the circumstances enumerated above which have been established by the prosecution beyond pale of doubt, we have no hesitation to come to the conclusion that the charge of murder has been proved beyond reasonable doubt against the appellant.

16. The above enumerated circumstances were established by the prosecution beyond reasonable doubt which form a complete chain so as to bring home the guilt of the accused without giving room to any other hypothesis except the guilt of the accused and those circumstances are inconsistent with the innocence of the accused and, in our view, fully establish the guilt of the accused of having committed gruesome murder of his wife. We, therefore, confirm the conviction of the appellant recorded by the learned Additional Sessions Judge under Section 302 of the Indian Penal Code.

17. As a result of foregoing discussion, the appeal is dismissed. The conviction of the appellant for the offence under Section 302 of the Indian Penal Code and sentence imposed on him to undergo R.I. for life and fine of Rs.250 in default S.I. for two months, recorded by the learned Additional Sessions Judge, Navsari, vide judgment and order dated November 16, 1994, in Sessions Case No. 80 of 1993, are confirmed. The muddamal be destroyed in terms of the directions given in the

impugned judgment.

(M.H. Kadri,J.)

(M.C. Patel,J.)
(swamy)